

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ORDERED SEALED BY COURT

unsealed
on 4/7/08

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Seizure of
(Address or brief description of property or premises to be seized)

One 2005 Ford Mustang, California license number
5MFE904, Vehicle Identification Number (VIN)
1ZVHT82H655141965, registered in the name of Juan
E. Macias, Sr. or Connie Macias.

DEPUTY
APPLICATION AND AFFIDAVIT

FOR SEIZURE WARRANT

CASE NUMBER **08 MJ 0692**

ORIGINAL


I, Nicholas I. Cheviron, being duly sworn depose and say:

I am a Special Agent of the Federal Bureau of Investigation (FBI), and have reason to believe
Official Title
in the Southern District of California, there is now certain property, namely:

One 2005 Ford Mustang, California license number 5MFE904, Vehicle Identification Number
(VIN) 1ZVHT82H655141965, registered in the name of Juan E. Macias, Sr. or Connie Macias,

which was used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt,
possession, or concealment of ... controlled substances, in violation of Title 21, United States Code, Section 881(a)(4).
The facts to support a finding of Probable Cause are as follows:

SEE ATTACHED AFFIDAVIT, WHICH IS HEREBY INCORPORATED BY
REFERENCE AND MADE A PART HEREOF.



Signature of Affiant

Sworn to before me, and subscribed in my presence

3/5/08 @ 4:35 pm at San Diego, California
Date/Time issued

Honorable Cathy Ann Bencivengo

United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

I, Nicholas I. Chevion, being duly sworn, depose and say the following.

A. EXPERIENCE AND TRAINING

1. I am a Federal law enforcement officer and have been a Special Agent of the Federal Bureau of Investigation (FBI) since January 7, 2007.

2. From May 2004 through December 2006, I was employed as a Police Officer in Bloomington, Illinois. I received twelve (12) weeks of training at the Illinois State Police Training Institute, where I became familiar with how controlled substances are consumed, manufactured, packaged, marketed and distributed. I have had the opportunity to work with other patrol officers, and detectives, who have many years of experience in narcotic investigations.

3. I am a graduate of the twenty-one week New Agent's Training Program at the FBI Academy in Quantico, Virginia. Following graduation, I was transferred to the San Diego Division of the FBI on June 25, 2007, and assigned to the Organized Crime Squad.

4. As a Special Agent I have participated in several narcotic investigations of alleged criminal violations of the Controlled Substance Act Laws. I have participated in undercover investigations involving the purchase of controlled substances, executed search warrants for controlled substances, and have conducted numerous surveillances in connection with narcotic investigations. I am familiar with the operation of illegal drug trafficking organizations in the United States, including those organizations whose operations involve the distribution of wholesale quantities of marijuana, methamphetamine and cocaine.

5. This affidavit, in part, is based on personal knowledge derived from my participation in this investigation and, in part, based upon information from the following sources:

a. Oral and written reports about this investigation which I have reviewed;

b. Physical surveillance conducted by federal agents or local law enforcement agents, which observations have been reported to me either directly or indirectly;

c. Summaries of conversations and electronic communications intercepted pursuant to court-authorized electronic surveillance orders;

d. A review of consensually recorded conversations; and

e. Statements of cooperating individuals.

6. Except as otherwise noted, the information set forth in this affidavit has been provided to me by other agents of the FBI, DEA, the Criminal Investigation Division of the Internal Revenue Service (IRS), officers of the San Diego Police Department (SDPD) and other law enforcement officers. Unless otherwise noted, whenever in this Affidavit I assert that a statement was made, the information was provided by another law enforcement officer (who may have had either direct or hearsay knowledge of the statement) to whom I have spoken or whose report I have read and reviewed. Likewise, information resulting from surveillance, except where otherwise indicated, does not necessarily set forth my own observations but rather has been provided directly or indirectly by other law enforcement officers who conducted such surveillance.

B. DESCRIPTION OF VEHICLE TO BE SEIZED/FORFEITED

7. This affidavit is made in support of the application for a seizure warrant for a **2005 Ford Mustang**, California license number **5MFE904**, Vehicle Identification Number (VIN) **1ZVHT82H655141965** (hereinafter a **2005 Ford Mustang**). This vehicle is registered in the name of Juan E. Macias, Sr. or Connie Macias, 1626 Via Del Mesonero, San Ysidro, California.

C. APPLICABLE STATUTES

8. The statutory bases for the seizure and forfeiture of the **2005 Ford Mustang** is Title 21, United States Code, Section 881(a)(4), which states in pertinent part:

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any

1 manner to facilitate the transportation, sale, receipt, possession,
2 or concealment of ... controlled substances which have been
3 manufactured, distributed, dispensed, or acquired in violation of
4 Title 21 of the United States Code.

5 **D. SUMMARY OF INVESTIGATION**

6 9. The FBI, DEA, IRS, and members of the local law enforcement
7 community are currently investigating the illegal diversion and distribution of pharmaceuticals,
8 primarily hydrocodone bitartrate (such as Vicodin) and oxycodone (such as OxyContin), from
9 three San Diego pharmacies: Galloway Pharmacy, Park Boulevard Pharmacy and White Cross
10 Pharmacy. Set forth below are individuals of interest who are associated with Galloway
11 Pharmacy:

12 a. Jesus Macias, date of birth December 24, 1983, a pharmacy
13 technician at Galloway Pharmacy, and his brother, Juan Ernesto Macias, Jr., date of birth July
14 6, 1978, illegally distributed pharmaceuticals. Based on five controlled purchases by a
15 confidential source of information for the FBI, and another seizure, agents estimate that Jesus
16 and Juan Macias distributed at least 10,018 hydrocodone tablets and 1,600 oxycodone tablets
17 (approximately 128 grams of oxycodone).

18 b. Jose Jesus Peruch Saenz, date of birth May 26, 1980, the
19 pharmacy technician who was in charge of ordering the pharmaceuticals for Galloway
20 Pharmacy, ordered the hydrocodone and oxycodone that was diverted and distributed by Jesus
21 and Juan Macias.

22 10. On February 22, 2008, a federal grand jury sitting in the Southern
23 District of California, returned an indictment charging the above three individuals, Jesus
24 Macias, Juan Ernesto Macias, Jr. and Jose Jesus Peruch Saenz, with Title 21, United States
25 Code, Sections 846 and 841(a)(1) - Conspiracy to Distribute Oxycodone and Hydrocodone
26 Bitartrate; Title 21, United States Code, Section 841(a)(1) - Distribution of Oxycodone and
27 Hydrocodone Bitartate, and Title 18, United States Code, Section 2 - Aiding and Abetting.
28

CONTROLLED PURCHASES:

11. On July 27, 2007, Juan Macias sold two bottles of OxyContin (each bottle containing 100 tablets of 80 milligrams of oxycodone) and two bottles hydrocodone (each bottle containing 500 tablets) to a confidential source of information for the FBI, for \$5,000. The controlled buy was surveilled and recorded. It is noted that after the controlled buy was completed, agents observed Juan Macias meeting with his brother, Jesus Macias. The vehicle utilized by Juan Macias to meet with the confidential source in the vicinity of the Fashion Valley Mall, 7097 Friars Road, San Diego, California, was a black 1988 Toyota Pickup bearing California license 3P13894. This vehicle is registered in the name of Juan E. Macias or Connie Macias, 1626 Via Del Mesonero, San Ysidro, California, the Macias brothers' parents.

12. On September 29, 2007, Jesus Macias sold two bottles of oxycodone (each bottle containing 100 80 mg tablets) and eight bottles of hydrocodone (each bottle containing 500 10mg tablets) to a confidential source for the FBI, for \$13,000. Juan Macias was also present during the pharmaceutical deal. The controlled buy was surveilled and recorded. The vehicle utilized by Jesus and Juan Macias to meet with the confidential source in the vicinity of the Fashion Valley Mall, 7097 Friars Road, San Diego, California, was the same Toyota Pickup from the July 27, 2007 controlled purchase.

13. At one point during the September 29, 2007 controlled buy, Juan and Jesus Macias told the confidential source that they initially could not get their car started to come to the meeting. Jesus Macias commented, "Dude, this is funny, we could make a movie...f.uckin' drug dealers with a car that don't work!"

14. On October 12, 2007, Jesus Macias sold four bottles of oxycodone (each containing 100 80mg tablets) and four bottles of hydrocodone (each containing 500 10mg tablets) to a confidential source for the FBI, for \$14,000. The controlled buy was surveilled and recorded. The vehicle utilized by Jesus Macias to meet with the confidential source in the vicinity of the Fashion Valley Mall, 7097 Friars Road, San Diego, California, was a white 2005 Ford Mustang bearing California license 5MFE304. This vehicle is also registered in the

1 name of their parents, Juan E. Macias, Sr. or Connie Macias, 1626 Via Del Mesonero, San
2 Ysidro, California.

3 15. On December 3, 2007, Jesus Macias sold three bottles of oxycodone
4 (each containing 100 80mg tablets) to a confidential source for the FBI, for \$7,500. The
5 controlled buy which took place at the residence shared by Jesus and Juan Macias, 1047 Elk
6 Run Place, Chula Vista, California, was surveilled and recorded. Juan Macias was present
7 during the transaction between Jesus Macias and the confidential source.

8 16. On January 23, 2008, Jesus Macias sold two bottles of oxycodone (each
9 containing 100 80mg tablets) to a confidential source for the FBI, for \$5,000. The controlled
10 buy which took place at the residence shared by Jesus and Juan Macias, 1047 Elk Run Place,
11 Chula Vista, California, was surveilled and recorded. Juan Macias was present during the
12 transaction between Jesus Macias and the confidential source.

13 **E. PROBABLE CAUSE FOR SEIZURE OF 2005 FORD MUSTANG**

14 17. On October 12, 2007, Jesus Macias sold four bottles of oxycodone (each
15 containing 100 80mg tablets) and four bottles of hydrocodone (each containing 500 10mg
16 tablets) to a confidential source for the FBI, for \$14,000. The controlled buy was surveilled
17 and recorded. The vehicle utilized by Jesus Macias to meet with the confidential source in the
18 vicinity of the Fashion Valley Mall, 7097 Friars Road, San Diego, California, was a white **2005**
19 **Ford Mustang** bearing California license 5MFE304. Although the **2005 Ford Mustang** is
20 registered in the name of Jesus Macias' parents, Juan E. Macias, Sr. and Connie Macias, 1626
21 Via Del Mesonero, San Ysidro, California, it has been observed by surveillance agents in the
22 custody and control of Jesus Macias on multiple occasions.

23 18. In addition to the **2005 Ford Mustang** being registered in the name of
24 Jesus and Juan Macias' parents which is subject of this seizure warrant, the following
25 additional vehicles are known to be associated with Juan E. Macias, Sr. and/or Connie Macias:

- 26 a. 1974 two-door Chevrolet, California license plate 5BIP200,
27 VIN 1Y27D4L169895
28 Vehicle registered in the name of Juan E. Macias, Sr.,
1626 Via Del Mesonero, San Ysidro, California

- b. 1978 Chevrolet Pickup, California license plate 1L20512, VIN 1W80U8R440768
Vehicle registered in the name of Connie Macias, 1626 Via Del Mesonero, San Ysidro, California
- c. 1988 Toyota Pickup, California license plate 3P13894, VIN JT4RN50R8J0354905
Vehicle registered in the names of Juan E. Macias or Connie Macias, 1626 Via Del Mesonero, San Ysidro, California (Note: From a review of the California Department of Motor Vehicle printout, it is unclear whether the Juan E. Macias is a Jr. or a Sr.)
(vehicle was utilized by Juan Macias, Jr. and Jesus Macias to conduct two of the above-mentioned controlled deliveries.)
- d. 2005 four-door Honda, California license plate 5KVU002 VIN 1HGCM55405A031245
Vehicle registered in the names of Juan E. Macias, Sr./ Connie Macias, 1626 Via Del Mesonero, San Ysidro, California

F. CONCLUSION

19. Based upon the facts presented above, there is probable cause to believe that the **2005 Ford Mustang, California license number 5MFE904, Vehicle Identification Number (VIN) 1ZVHT82H655141965** registered in the name of Juan E. Macias, Sr. or Connie Macias, 1626 Via Del Mesonero, San Ysidro, California, was used to facilitate the transportation of illegal substances. Query of the N.A.D.A. Official Used Car Guide reveals this vehicle to have a trade-in value of approximately \$18,000.00. As such, the **2005 Ford Mustang** is subject to forfeiture to the United States pursuant to Title 21, United States Code, Section 881(a)(4).

20. The **2005 Ford Mustang** is mobile by its very nature and a significant tangible asset. In addition, San Diego is located within approximately ten miles of an international border with the Republic of Mexico, over which United States forfeiture orders are relatively unenforceable. Given these circumstances, I believe a restraining order alone would be insufficient to assure that the **2005 Ford Mustang** would be available for forfeiture to the United States should the Court or jury order the forfeiture.

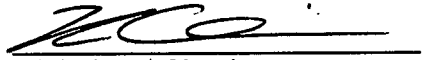
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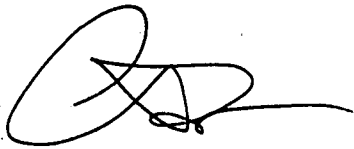
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SEALING REQUEST

Because of the ongoing nature of this investigation, I am requesting that this affidavit and seizure warrant, and all other associated court records be ordered sealed until further order of the court, as disclosure of any of the above would hamper further investigative efforts.


Nicholas I. Cheviron
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me this 5th day of March, 2008.


HON. CATHY ANN BENCIVENGO
United States Magistrate Judge
Southern District of California